IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4553 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI PATEL DEVSHI HARJI & ANOTHER

Versus

STATE OF GUJARAT & ANOTHER

Appearance:

MR CH VORA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/08/2000

ORAL JUDGEMENT

#. The petitioners are aggrieved by an order passed by the Collector, Kachchh at Bhuj on October 9, 1992 in R.R.T. Revision No.57/92 (Annexure-C). The said order was passed in exercise of powers under Land Revenue Rules 108(6) in respect of Entry No.487 dated March 26, 1982

and certified on April 27, 1982 in respect of Survey No.340/1 of Bhuj.

#. The facts in a narrow compass are that, petitioner purchased the said new Survey No.340/1 (old Survey No.932) from one Bakali Dawood Mohammad by a registered sale deed on September 1, 1977. After the sale deed was executed, the land in question was converted to non-agricultural use by Entry No.487 in the Village Form No.6. The new measurement of the land in question was found to be 17-Aare excess and, ultimately the land in question was regularized and entered into records by Entry No.396 in the Village Form No.6. Since then, the land was continuously used for non-agricultural purpose. On the recommendation by the City Survey Superintendent to the Dy.Collector on September 29, 1981 the land was assessed as non-agricultural land on approval by the Dy.Collector by an order dated October 5, 1981, and entry being made bearing no.487.

#. Learned Collector took this transaction and entry in suo motu revision by issuing a show-cause notice dated May 13, 1992 questioning Entry No.487 calling upon to the petitioners to show cause, why the said entry should not be cancelled ? The notice was issued mainly on the ground that no previous permission was obtained as to conversion of the land to non-agricultural use and regularization of the excess land was not in accordance with the prevailing rules. Objections regarding the stamp duty etc. were also raised. The petitioners submitted a suitable reply, and ultimately the impugned order was passed.

#. It is contended in the petition that the notice and the order are belated and therefore bad in law. The petitioners have come with a case that the land in question has been divided into plots and has been sold to different persons after following due procedure. People who have purchased the land have made their construction over the plots, therefore also, the order may be quashed and set-aside.

#. Mr.Vora, learned advocate appearing for the petitioner submitted that the order is passed after a long gap of 10 years. The authority concerned is expected to exercise the powers within reasonable time when specific period of limitation is not prescribed under the law. Ten years time is an unreasonable time. In the instant case, new equities have taken place as the land is divided into plots and sold to different owners during this period of 10 years. He, therefore, submitted

that the impugned order may be quashed and set-aside and the petition may be allowed.

#. Mr.Gohil has opposed this petition. He has placed reliance on certain decisions.

#. Having regard to the rival side contentions, the petition deserves to be allowed on the ground of delayed action, and in fact that is the main ground on which the petition is filed and argued. It is true that no period of limitation is prescribed for exercise of powers by the Collector in the instant case. But, when such limitation is not prescribed, the authority is expected to exercise the powers within reasonable time. If the powers are not exercised within reasonable time, what may happen is evident in the instant case. New equities have taken place which would lead to multiple litigations if the impugned order is allowed to stand. The Apex Court, in various decisions has consistently observed that, such powers are required to be exercised within reasonable time. Whether time is reasonable or not, is to be determined in facts of each case. In the instant case, the respondents have not filed any affidavit in reply, nor any attempt is made to explain the delay. Even in the impugned order, there is no reference whatsoever to the time gap, and therefore the delay cannot be said to have been explained as reasonable. With this background, if the period of 10 years is seen, there is no scope for considering it as reasonable or ordinate. Under the circumstances, the petition deserves to be allowed.

#. For the foregoing reasons, the petition is allowed. Order impugned in this petition passed by the Collector, Kachchh on October 9, 1992 in R.R.T. Revision No.57/92 is hereby quashed and set-aside. Rule is made absolute with no order as to costs.

(A.L. Dave, J.)

/sakkaf